Hot Topics Forum:
Effectively Managing Data Rights

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Learn. Perform. Succeed

Overview

- Review of Data Rights (brief)
- Technical and Computer Software Data Rights
- Data Rights as part of Technology Development Strategy/Acquisition Strategy
- Data Delivery
  - New contracts
  - Current contracts
- Questions/discussion

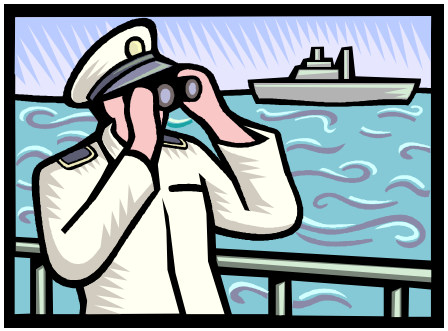
Government License Rights

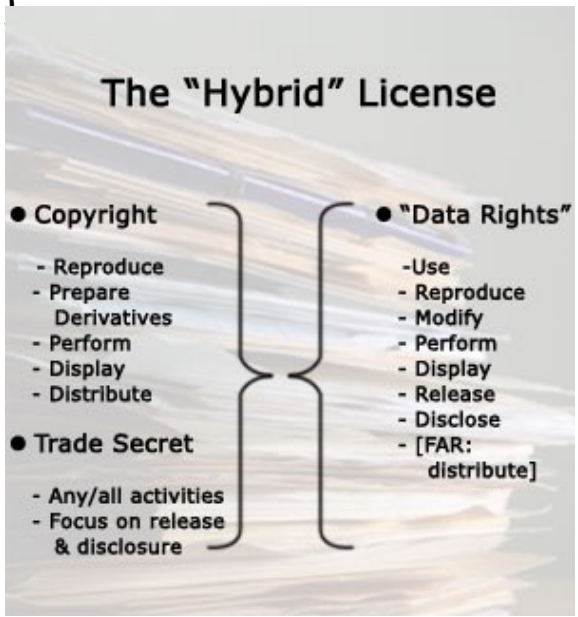
Within Government

- Modify, reproduce, use, display, perform:
  - Unlimited Rights
  - Gov't Purpose Rights
  - SBIR
  - Restricted Rights (SW)
  - Limited Rights

Release or Disclose to Third Parties

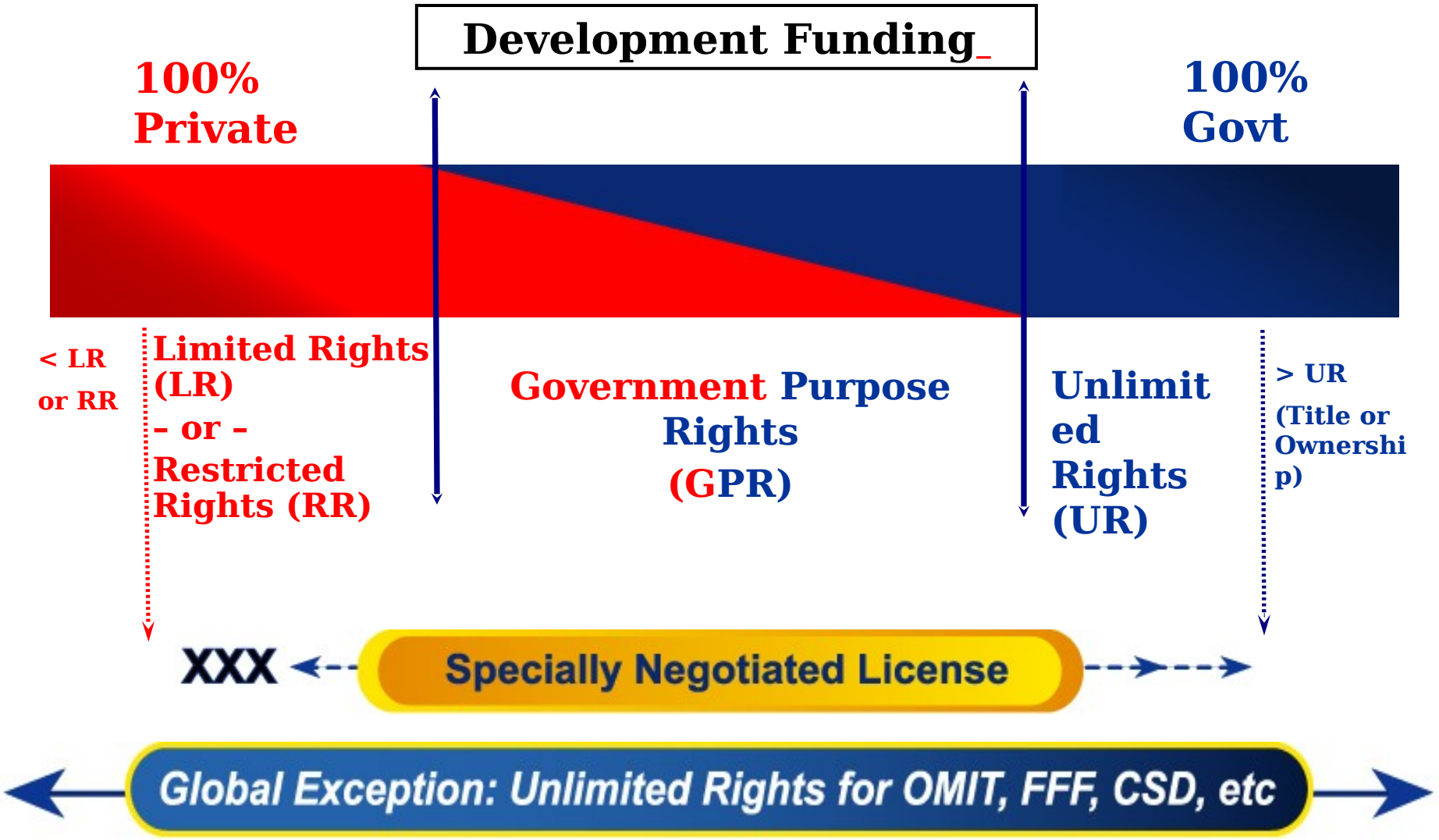
- Unlimited Rights
- GPR (with NDA and for Government purposes)
- Modify, reproduce, use, display, perform





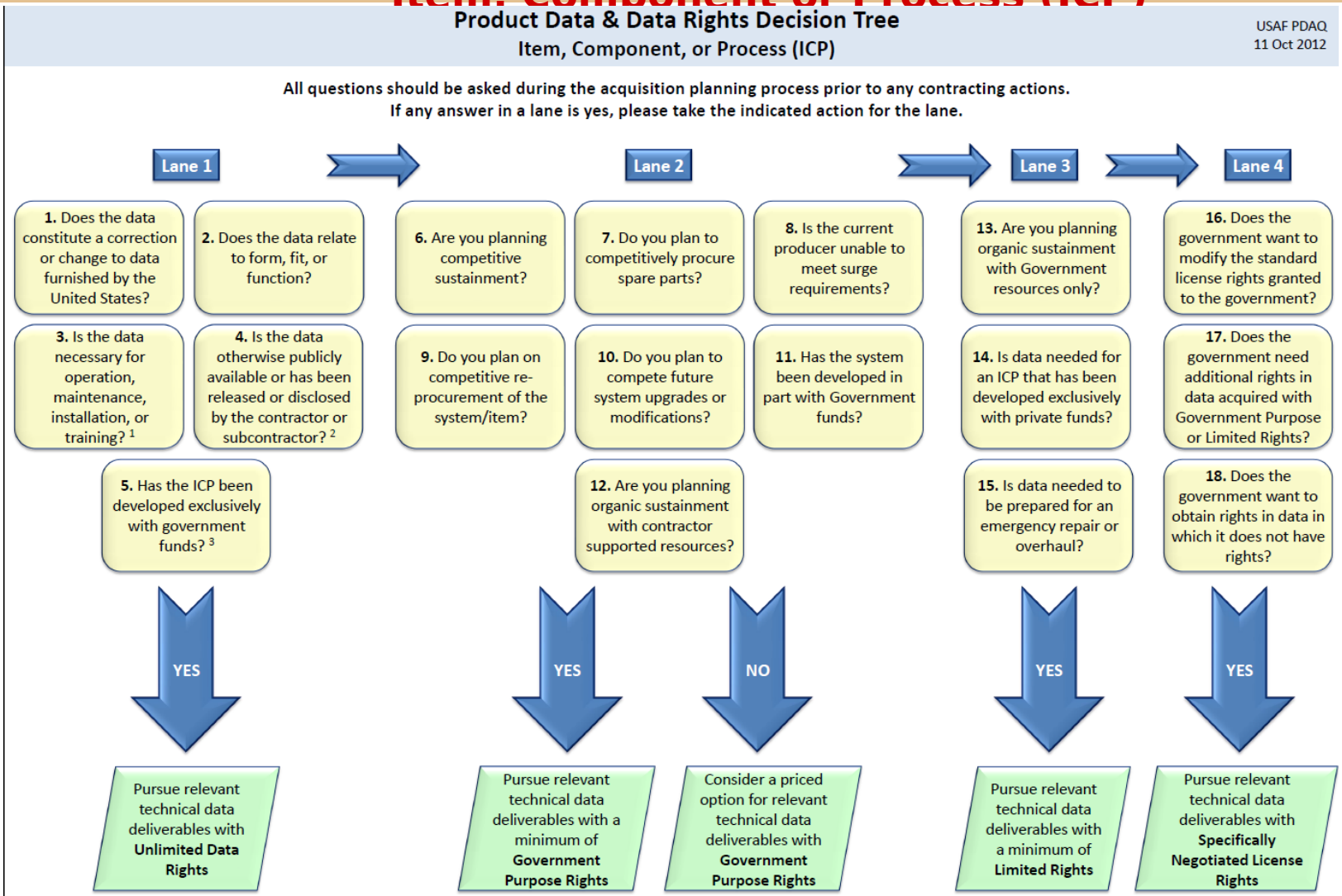
New rules for "Covered Government support contactors."

Quick Review of Data Rights



Product Data & Data Rights Decision Tree

Item, Component or Process (ICP)


Product Data & Data Rights Decision Tree
Item, Component, or Process (ICP)
USAF PDAQ
11 Oct 2012
All questions should be asked during the acquisition planning process prior to any contracting actions.
If any answer in a lane is yes, please take the indicated action for the lane.
Lane 1
Lane 2
Lane 3
Lane 4
1. Does the data constitute a correction or change to data furnished by the United States?
2. Does the data relate to form, fit, or function?
3. Is the data necessary for operation, maintenance, installation, or training? [1]
4. Is the data otherwise publicly available or has been released or disclosed by the contractor or subcontractor? [2]
5. Has the ICP been developed exclusively with government funds? [3]
6. Are you planning competitive sustainment?
7. Do you plan to competitively procure spare parts?
8. Is the current producer unable to meet surge requirements?
9. Do you plan on competitive re-procurement of the system/item?
10. Do you plan to compete future system upgrades or modifications?
11. Has the system been developed in part with Government funds?
12. Are you planning organic sustainment with contractor supported resources?
13. Are you planning organic sustainment with Government resources only?
14. Is data needed for an ICP that has been developed exclusively with private funds?
15. Is data needed to be prepared for an emergency repair or overhaul?
16. Does the government want to modify the standard license rights granted to the government?
17. Does the government need additional rights in data acquired with Government Purpose or Limited Rights?
18. Does the government want to obtain rights in data in which it does not have rights?
YES
YES
NO
YES
YES
Pursue relevant technical data deliverables with Unlimited Data Rights
Pursue relevant technical data deliverables with a minimum of Government Purpose Rights
Consider a priced option for relevant technical data deliverables with Government Purpose Rights
Pursue relevant technical data deliverables with a minimum of Limited Rights
Pursue relevant technical data deliverables with Specifically Negotiated License Rights
Notes
1. other than detailed manufacturing or process data
2. without restriction on further release or disclosure
3. It is permissible to acquire less than unlimited rights (down to limited rights) for data funded exclusively with government funds as long as that data doesn't fit within boxes #1, #2, #3, or #4.
Sources
10 USC 2320 – Rights in Technical Data
DFARS Subpart 227.71 – Rights in Technical Data
DODI 5000.02 – Operation of the Defense Acquisition System

Processes for Technical Data and Noncommercial Computer Software

Process Involving Technical Data:

1. Will the acquisition be a noncommercial item or a commercial item?
2. If a noncommercial acquisition, will the acquisition be for an item, component or process OR computer software?
3. If the noncommercial acquisition is for an item, component or process, what do you want as technical data deliverables?
4. Need to compare the list of deliverables against DFARS 252.227.7013(b)(1) Unlimited Rights List to determine which pieces of technical data the Government will obtain with Unlimited Rights. (For the most part, technical data in which the Government has Unlimited Rights not based on funding but based on the "Nature of the Data."
5. What are the remaining technical data deliverables and what data rights will the Government receive in each? Government Purpose Rights, Limited Rights, SBIR? Have the components been segregated in order to make this determination?
6. Is there any technical data listed in Number 5 in which you would need at least Government Purpose Rights for the life cycle of the item, component or process?
7. Need to determine a value of the difference between Limited Rights and

Process Involving Noncommercial Computer Software:

1. What noncommercial computer software and computer documentation are deliverables?
2. If a noncommercial computer software acquisition is involved, in which modules of the computer software does the Government have Unlimited or Government Purpose Rights?
3. The Government will obtain Unlimited Rights in the computer software documentation as long as you list it as a deliverable.
4. Which modules does the Government have other than Unlimited Right or Government Purpose Rights?
5. Will the Government need at least Government Purpose Rights in the modules listed in Number 4 for life cycle needs including follow-on competitions?
6. Need to determine the value of the difference between Restricted Rights and Government Purpose Rights for any computer software module for the life cycle needs or follow-on competitions.

What Deliverables Does the Gov't need?

- Three places to explore:
  - Acquisition strategy/Technology Development Strategy
    - Plan for future increments (upgrades, tech refresh)
    - Provision for unplanned future increments (responding to new requirements)
    - Plans for future competition (follow-on production, spares, support)
  - Logistics support concept (para 7.4 of AS/TDS)
    - Military vs. Civilian vs. Contractor
    - Where work performed (unit, support org. or depot)
  - Other Sources
    - DoDAF 2.02 (viewpoints)
    - Objective architectures
    - Industry standards
    - ….

Classification/Distribution Statement, as required

TECHNOLOGY DEVELOPMENT STRATEGY

[or]

ACQUISITION STRATEGY

FOR

[PROGRAM NAME]

[Sample Outline]

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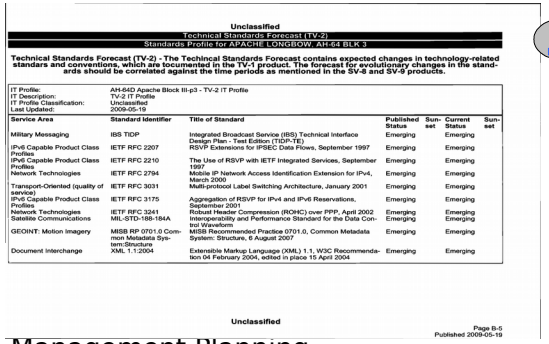

Unclassified

Technical Standards Forecast (TV-2)

Standards Profile for APACHE LONGBOW: AH-64 BLK 3

Technical Standards Forecast (TV-2) - The Technical Standards Forecast contains expected changes in technology-related standars and conventions, which are tocumanted in the TV-1 product. The forecast for evolutionary changes in the standards should be correlated against the time periods as mentioned in the SV-8 and SV-9 products.

IT Profile:	AH-64D Apache Block III-p3 - TV-2 IT Profile
IT Description:	TV-2 IT Profile
IT Profile Classification:	Unclassified
Last Updated:	2009-05-19

Service Area	Standard Identifier	Title of Standard	Published Status	Sunset	Current Status	Sunset
Military Messaging	IBS TIDP	Integrated Broadcast Service (IBS) Technical Interface Design Plan - Test Edition (TIDP-TE)	Emerging		Emerging	
IPv6 Capable Product Class Profiles	IETF RFC 2207	RSVP Extensions for IPSEC Data Flows, September 1997	Emerging		Emerging	
IPv6 Capable Product Class Profiles	IETF RFC 2210	The Use of RSVP with IETF Integrated Services, September 1997	Emerging		Emerging	
Network Technologies	IETF RFC 2794	Mobile IP Network Access Identification Extension for IPv4, March 2000	Emerging		Emerging	
Transport-Oriented (quality of service)	IETF RFC 3031	Multi-protocol Label Switching Architecture, January 2001	Emerging		Emerging	
IPv6 Capable Product Class Profiles	IETF RFC 3175	Aggregation of RSVP for IPv4 and IPv6 Reservations, September 2001	Emerging		Emerging	
Network Technologies	IETF RFC 3241	Robust Header Compression (ROHC) over PPP, April 2002	Emerging		Emerging	
Satellite Communications	MIL-STD-188-184A	Interoperability and Performance Standard for the Data Control Waveform	Emerging		Emerging	
GEOINT: Motion Imagery	MISB RP 0701.0 Common Metadata System:Structure	MISB Recommended Practice 0701.0, Common Metadata System: Structure, 6 August 2007	Emerging		Emerging	
Document Interchange	XML 1.1:2004	Extensible Markup Language (XML) 1.1, W3C Recommendation 04 February 2004, edited in place 15 April 2004	Emerging		Emerging	

Unclassified

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TDS/AS Outline
(Technology Development Strategy/Acquisition Strategy)

- **TDS/AS is where documented**
  - **Competition**
  - **Logistics**
  - **Technical Data Rights Strategy (IP Strategy)**
- **DAG 2.8. Technology Development Strategy/Acquisition Strategy (TDS/AS) Outline**
  - **2.8.1. Purpose**
  - **2.8.2. Capability Need**
  - **2.8.3. Acquisition Approach**
  - **2.8.4. Tailoring**
  - **2.8.5. Program Schedule**
    - **2.8.5.1. Interdependencies**
  - **2.8.6. Risk and Risk Management**

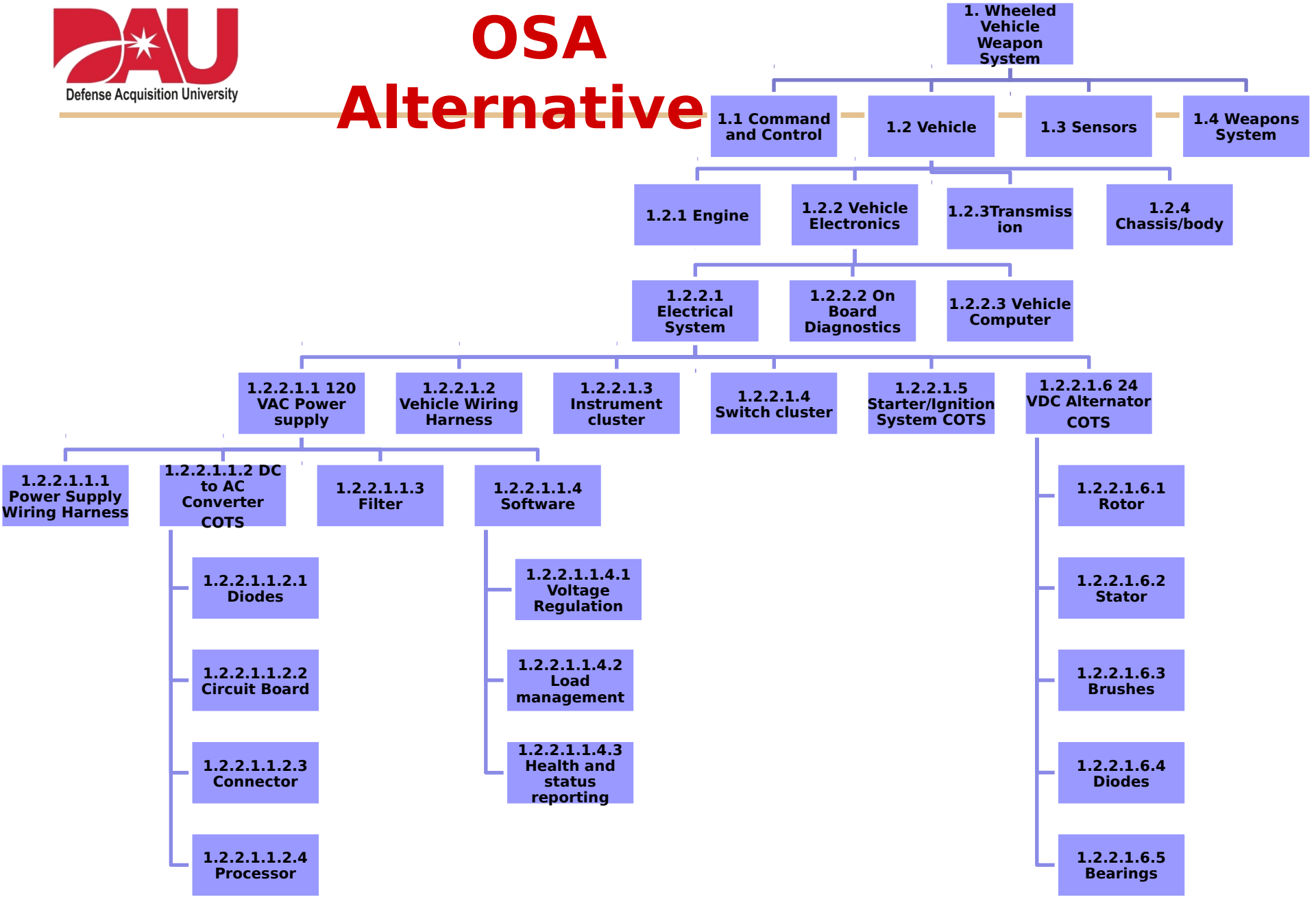
TDS/AS Outline

- **2.8.7. Business Strategy**
  - **2.8.7.1. Competition Strategy**
  - **2.8.7.2. Market Research**
  - **2.8.7.3. Advance Procurement**
  - **2.8.7.4. Sustainment Strategy**
  - **2.8.7.5. Major Contract(s) Planned**
    - **2.8.7.5.1. Major Contract Table**
    - **2.8.7.5.2. Contract Incentives**
    - **2.8.7.5.3. Earned Value Management (EVM)**
    - **2.8.7.5.4. Source Selection Approach**
    - **2.8.7.5.5. Sources**
    - **2.8.7.5.6. Contract Bundling or Consolidation**
    - **2.8.7.5.7. Subcontracting Plan / Small Business Participation**
    - **2.8.7.5.8. Special Contracting Considerations**
    - **2.8.7.5.9. Special Test Equipment**
    - **2.8.7.5.10. Testing & Systems Engineering Requirements**
    - **2.8.7.5.11. Warranty**
    - **2.8.7.5.12. Multiyear Contracting**
    - **2.8.7.5.13. Leasing**
    - **2.8.7.5.14. Modular Contracting (Major Information Technology programs only)**
    - **2.8.7.5.15. Payment**
    - **2.8.7.5.16. Other Relevant Information**

TDS/AS Outline

- **2.8.7.6. Technical Data Rights Strategy** (formerly the Data Management Strategy)
  - **2.8.7.6.1. Technical Data Analysis**
  - **2.8.7.6.2. Provision of Technical Data Rights in Sustainment**
  - ***2.8.7.6.3. Business Case Analysis (BCA) with Engineering Tradeoff Analysis***
  - **2.8.7.6.4. BCA with Priced Contract Option for Future Delivery of Technical Data**
  - **2.8.7.6.5. Risk Analysis**

Discussion of OSA Alternative



Turning Data Requirements into Deliverables

- Use AS/TDS, Logistics Strategy, Architecture to:
  - Define data deliverables
    - Technical data packages
    - Form, Fit, Function & Operations, Maintenance, Installation and Training documents
    - Interface documents/specifications
    - Computer Software/Computer Software Documentation
  - For each, define required rights in technical data and software
  - For data needed in future, use options
  - Use Deferred Ordering Clause, Data Accession List
    - Permits ordering data not explicitly described in RFP CDRLs
- Helpful Guide: Army Guide for the Preparation of a Program Product Data Management Strategy (DMS) with 2012 addendum
- Additional guidance including RFP Language: DoD Open Systems Architecture Contract Guidebook for Program Managers

Approach to Breaking Vendor Lock

Establish an Environment for

- Publish the intent to compete
- Establish Gov't/Industry/Academia forum
- Establish a Flexible Contracting Approach

Leverage and Exercise Data

- Assess what you have and what you need
- Determine where the Government has unlimited rights
- Verify delivery of all CDRLs, confirm that markings are correct and challenge questionable assertions

Change approach to Systems Engineering

- Develop a common architecture across a product line or similar Programs of Record
- Functionally decompose legacy programs

Hold Competition

- Create an alternative
- Limit integrator role
- Use GPR for next competition
- Inject OSA through technical insertions
- Use government labs for integration

Establish an Environment for Change

part of past performance evaluation

- Associate contractors sink/swim together

Establish an Environment for

- Incentive fees
- Include OSA and data rights as part of evaluation
- Reward reuse in evaluation criteria

What if - we don't have the Data

- Mod contract to add CDRLs for needed data
  - Regardless of limitations on rights
  - Cost of delivery of existing data may be as little as cost of reproduction/delivery (actual cost dependent upon many factors)
  - Require delivery to the Government
    - Verify markings
    - Challenge as appropriate
- Delivery should be hard copy, disc or electronic to a Government (not contractor) server
- Contractor format will minimize cost

What if – Gov't has the Data, but not Sufficient Rights

- Use law to challenge/negotiate change for:
  - Operations, Maintenance, Installation & Training
  - Form, Fit and Function
  - Computer Software Documentation
- Is consideration owed the Government for some prior contractor shortfall? If so, use this leverage.
- Negotiate options to increase rights to GPR
- Verify markings on data match contract
  - Should be paragraph by paragraph, not blanket
  - Challenge where appropriate
- Include conditions where no cost to go to GPR (contractor abandons product/product area, bankruptcy, etc.)

Possible actions on existing and follow-on contracts

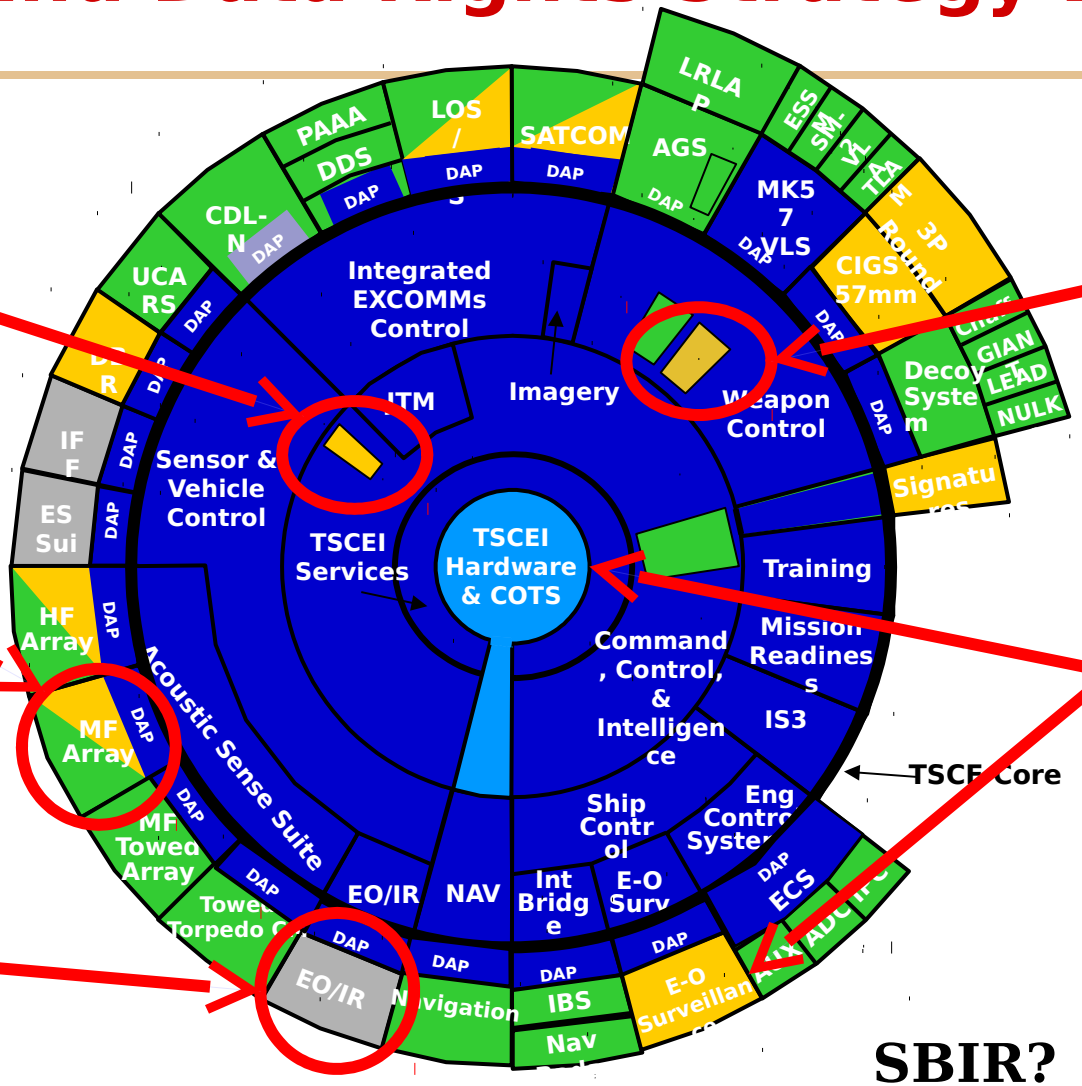
- Design replacement as appropriate
  - Customer can always design or contract for replacement (SBIR??)
  - Sometime just the plan to reverse engineer will influence contractor
  - May not be an option for some software
- Follow-on contracts need not have same data rights clauses
  - Chance to re-negotiate
  - Data rights can be a source selection criteria (technical and cost)
- Ensure you take delivery of all data – even if delivered with less than Gov't Purpose Rights
  - Why:
    - Abandoned product
    - Company goes out of business
    - Retirement/death of key person(s)
    - Company is less than forthcoming when facing re-compete
  - Use "escrow account" if necessary (especially useful with commercial product technical data/software)

IP and Data Rights Strategy Decisions

What limits competition and third party product integration?

How do we manage acquisition of components?

Where can we use SNLs to drive fruitful market forces?



Where do we want innovation from small business?

Where is it acceptable to have COTS, limited, or restricted rights?

SBIR?

What does your map look like?

Unlimited
GPR
COTS
Restricted Rights
To Be Negotiated

Summary

- Biggest challenge is determining Government's needs (present and future)
  - Acquisition Strategy – Business Considerations
  - Logistics Support Strategy
  - Architecture (interactions both internal and external)
- Document requirements in AS/TDS
- Incorporate into RFP & subsequent contract
- Ensure delivered as agreed to in contract
- Include a Deferred Ordering Clause
- When necessary modify existing contracts to get required data

Addition Training on Intellectual Property and Data Rights available in CLE 068